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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,792	06/06/2005	David Snyder	US020502 US	6511

28159 7590 04/24/2008

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EXAMINER

LAVERT, NICOLE F

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

04/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/537,792

Applicant(s)

SNYDER, DAVID

Examiner

NICOLE F. LAVERT

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-29 is/are pending in the application.
4a) Of the above claim(s) 30-45 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 25-29 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 06 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 6/6/05
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. During a telephone conversation with W. Brinton Yorks on 15 April 2008 a provisional election was made without traverse to prosecute the invention of Group I, claims 25-29. Affirmation of this election must be made by applicant in replying to this Office action. Claims 30-45 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 25-29, drawn to a method for delivering a defibrillation shock, classified in class 607, subclass 7.
 - II. Claims 30-37, drawn to a method for apply electrotherapy in an automatic external defibrillator, classified in class 607, subclass 10.
 - III. Claims 38-45, drawn to a defibrillator, classified in class 607, subclass 5.
2. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require the defibrillator to be an automatic external defibrillator, but the combination can rather use an implantable defibrillator. The subcombination has separate utility such as a method that can analyze an ECG signal at any time

during the CPR interval, such as after the CPR interval via the ECG detector versus analyzing an ECG prior to the end of the CPR interval.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

3. Inventions I and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be used by a materially different apparatus, such as a detector comprising an ECG detector in combination with the CPR cessation detector in order to analyze an ECG signal prior to the end of the CPR interval, rather than a defibrillator only having a detector to detect a cessation of CPR.

4. Inventions II and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the

apparatus as claimed can be used by a materially different process, such as a method for applying electrotherapy to the heart via an implantable defibrillator versus a method for applying electrotherapy via an automatic external defibrillator.

Specification

5. The disclosure is objected to because of the following informalities: a) In regards to the phrase, "...forwarded to a correlator 54" the reference number "54" should be changed to "60" [(Fig 3) & (pp 8, ln 18)], b) In regards to the phrase, "...and a common-mode amplifier 52" the reference number "52" should be changed to "62" [(Fig 3) & (pp 8, ln 31)], c) In regards to the phrase, "...transmitted to a correlator 72," the reference number "72" should be changed to "73" [(Fig 3) & (pp 9, ln 6)], d) in regards to the phrase, "...from the differential amplifier 58" the reference number "58" should be changed to "56" [(Fig 3) & (pp 9, ln 8)], e) In regards to the phrase, "...correlators 60 & 72" the reference number "72" should be changed to "73" [(Fig 30 & (pp 9, ln 8 & 10)], f) In regards to the phrase, "...in step 120" the reference number should be changed to "102" [(Fig 4) & (pp 9, ln 20-21)], & g) In regards to the phrase, "...in step 160" the reference number "160" should be changed to "106" [(Fig 4) & (pp 9, ln 26 & 32)]. Appropriate correction is required.

Drawings

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: The "cardiac arrest victim" designated by reference numeral "2" is not shown in Fig 1 (pp 1, ln 11). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include

all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: The following reference numbers are not disclosed in the specification; "41" (Fig 2), "104" & "108-111" (Fig 3), "202-210" (Fig 4), and "300-320" (Fig 6). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. **Claims 25-28** are rejected under 35 U.S.C. 102(e) as being anticipated by Elghazzawi et al. (US 2004/0162585 A1).

For **claim 25**, Elghazzawi et al. discloses, a method for delivering a defibrillation shock using a defibrillator, the method comprising the steps of ([0009] & [0024]): (a) having the defibrillator initiate a cardio-pulmonary resuscitation (CPR) interval; (b) charging the defibrillator prior to an end of the cardio-pulmonary resuscitation (CPR) interval [0003]; (c) analyzing an ECG signal prior to the end of the cardio-pulmonary resuscitation (CPR) interval; and, (d) delivering a defibrillation shock after the end of the cardio-pulmonary resuscitation (CPR) interval if needed [0024].

In regards to **claim 26**, Elghazzawi et al. discloses, the method of claim 25 ([0009] & [0024]), wherein step (c) includes analyzing the ECG signal for signal corruption prior to the end of the cardio-pulmonary resuscitation (CPR) interval and, if there is substantially no signal corruption, delivering the defibrillation shock if needed [0024].

In regards to **claim 27**, Elghazzawi et al. discloses, the method of claim 25 ([0009] & [0024]), wherein step (c) includes determining whether a disturbance associated with the cardio-pulmonary resuscitation (CPR) interval is detected; if there is substantially no disturbance, delivering the defibrillation shock if needed [0024].

In regards to **claim 28**, Elghazzawi et al. discloses, the method of claim 25 ([0009] & [0024]), further comprising the step of notifying an operator of the defibrillator prior to delivering the defibrillation shock [0024].

In regards to **claim 29**, Elghazzawi et al. discloses, the method of claim 25 ([0009] & [0024]), wherein the defibrillation shock is provided about 10 seconds after the end of the cardio-pulmonary resuscitation (CPR) interval ([0024]-[0025]). Note that it is well known in the defibrillation art to provide a defibrillation shock at a specified time, such as 10 seconds, after a CPR interval, as instantly claimed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NICOLE F. LAVERT whose telephone number is (571)270-5040. The examiner can normally be reached on M-F 7:30-5:00p.m. (Alt. Fridays).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R Evanisko/
Primary Examiner, Art Unit 3762

/Nicole F. LaVert/
Examiner, Art Unit 3762